Effectiveness of the Environmental Assessment Track Process under the *Canadian Environmental Assessment Act*

Government of Canada
Quality Assurance Program for
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About this Report

This report is issued under the Quality Assurance Program for environmental assessments conducted under the *Canadian Environmental Assessment Act* (the Act). The Canadian Environmental Assessment Agency (the Agency) has a duty, under section 63 of the Act, to establish and lead such a program.

The report explores the effect the "environmental assessment track process", under sections 21 and 21.1 of the Act prior to its recent amendment, had on:

- responsible authorities' recommendations to the Minister of the Environment to refer a project to a review panel or to continue assessing it by comprehensive study;
- the scope of the project for the purposes of the environmental assessment, the factors to be considered in the assessment, and the scope of those factors;
- the time taken to undertake the environmental assessment; and
- the coordination of federal and provincial activity when both federal and provincial legislation concurrently require projects to undergo environmental assessment.

The analysis upon which this report is based was conducted during the last six months of 2009. It has informed development of amendments to the Act introduced in the March 29, 2010 *Jobs and Economic Growth Act*, which subsequently received Royal Assent on July 12, 2010.

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1 INTRODUCTION

Amendments to the *Canadian Environmental Assessment Act* (the Act), proclaimed on October 30, 2003, established a decision-making process during the initial stages of a comprehensive study. Its purpose was to create greater process certainty and to eliminate the possibility of a project being referred to a review panel after a comprehensive study of the project had already been completed. It has often been referred to as the "environmental assessment track process".

The environmental assessment track process was outlined in sections 21 and 21.1 of the Act, as amended in 2003. It required responsible authorities to consult with the public on the scope of the project for the purposes of the environmental assessment; the factors to be considered in the assessment; the proposed scope of those factors; and the ability of the comprehensive study to address issues relating to the project. Although the method of consultation was not specified in the Act, the procedure typically followed was to issue a *Draft Scoping Document*, upon which the public was invited to comment in writing. The responsible authority then reported to the Minister of the Environment (the Minister) on the matters on which it had consulted, as well as on any public concerns in relation to the project and the potential of the project to cause adverse environmental effects, and recommended whether the project should continue to be assessed by comprehensive study or be referred to a mediator or review panel. (A referral to a mediator has never been made; consequently this report deals only with referrals to review panels.) The responsible authority's report dealing with the above matters was commonly referred to as the *Environmental Assessment Track Report*.

The Minister, after considering the information in the *Environmental Assessment Track Report*, made an irrevocable decision on the method of assessment (the environmental assessment track decision).

From October 30, 2003 when amendments creating the environmental assessment track process were proclaimed until July 12, 2010 when the *Jobs and Economic Growth Act* was proclaimed, all projects that had undergone assessment by comprehensive study had been subject to the environmental assessment track process. During that same period, however, only a portion of referrals of projects to review panels resulted from undertaking the environmental assessment track process. In the remaining cases responsible authorities made a direct request to the Minister, in accordance with section 25 of the Act, to refer the project to a review panel. That procedure is commonly called a "section 25 panel referral".

Anecdotal comments of federal officials as well as preliminary work conducted by the Agency had suggested that, in at least some cases, the environmental assessment track process was causing delay while not significantly adding value to the assessment. Moreover, it had appeared to have discouraged effective cooperation between federal and provincial government departments and agencies in those situations where an environmental assessment of the same project had been concurrently required by both federal and provincial legislation. Consequently, a study addressing the above considerations was undertaken by the Canadian Environmental Assessment Agency

under its legislatively mandated Quality Assurance Program for federal environmental assessments. This report provides the results of that study.

The analysis upon which this report is based was conducted during the last six months of 2009. The analysis informed development of amendments to the Act introduced in the March 29, 2010 *Jobs and Economic Growth Act*, which subsequently received Royal Assent on July 12, 2010. As a result of those amendments, the environmental assessment track process has been eliminated.

2 METHODS

The study examined the past influence of the environmental assessment track process on:

- responsible authorities' recommendations to the Minister to refer a project to a review panel or continue assessing it by comprehensive study;
- the scope of the project for the purposes of the environmental assessment, the factors to be considered in the assessment, and scope of those factors;
- the time taken to undertake the environmental assessment; and
- the coordination of federal and provincial activity when both federal and provincial legislation concurrently require projects to undergo environmental assessment.

The study identified, from information posted on the Canadian Environmental Assessment Registry Internet Site (CEARIS), those projects where a *Notice of Commencement* of a comprehensive study had been posted between October 30, 2003 and December 31, 2009, and a final decision on the type of assessment had been made by the latter date.

The study focussed in greater detail on projects that had gone through the environmental assessment track process. Information supporting the analysis of the environmental assessment track processes for those projects was obtained from the following sources.

- The responsible authority's *Draft Scoping Document* which was made available to the public for written comment. That document outlined the responsible authority's initial scoping proposal, based on internal analysis and discussion.
- The responsible authority's internal *Environmental Assessment Track Report* to the Minister. That document presented the results of public consultations; discussed public concerns and the nature of probable adverse environmental effects of the project; and made a recommendation to the Minister on the appropriate method of assessment (either comprehensive study or panel review).

3 RESULTS

The study identified 44 assessments (Table 1) that met the criteria described in the previous section (*Notice of Commencement* of a comprehensive study posted between October 30, 2003 and December 31, 2009; final decision on type of assessment made by the latter date).

Twenty-one of the 44 projects had concurrently required environmental assessment under provincial legislation. Seven other projects had been previously assessed under a provincial process (or such an assessment had been substantively completed) before the federal Act was triggered, typically as a result of a subsequent request for federal funding.

Thirty-five of the 44 projects went through the environmental assessment track process under former sections 21 and 21.1 of the Act. Of those, 30 subsequently remained on the comprehensive study track and five were referred to a review panel. Three of the latter cases occurred in 2005, one in 2006 and one in 2007.

Nine of the 44 projects did not go through the environmental assessment track process under sections 21 and 21.1 of the Act. Instead responsible authorities made an early request to the Minister, under section 25 of the Act, to refer the project to a review panel. All five panel referrals since mid-2007 have been made this way.

Table 1. Assessments commenced as Comprehensive Studies in 2004 to 2009 that by December 31, 2009 had a Final Decision on the Type of Assessment

Project Title	CEARIS [1] Number	Concurrent Provincial EA?	Minister's Decision		
			Comp Study (s. 21.1)	Review Panel (s. 21.1)	Review Panel (s. 25)
British Columbia					
Kemess North Gold-Copper Mine [2]	04-07-3394	*Yes*			X
Deltaport Third Berth Project	04-03-3734	*Yes*	X		
Orca Sand and Gravel Project	04-03-5332	*Yes*	X		
Galore Creek Gold-Silver-Copper Mine	05-03-8858	*Yes*	X		
Kitimat LNG Inc.-Liquefied Natural Gas Terminal	05-03-10430	*Yes*	X		
Mount Milligan, Gold Copper Mine	08-03-39778	*Yes*	X		
Fairview Terminal Phase II Expansion Project	08-03-37956	*Yes*	X		
Bute Inlet Hydroelectric Project	09-05-44825	*Yes*			X
Alberta					
EnCana Corporation-Canadian Forces Base (CFB) Suffield National Wildlife Area Natural Gas Infill Development Project	05-03-15620			X	

Table 1. Assessments commenced as Comprehensive Studies in 2004 to 2009 that by December 31, 2009 had a Final Decision on the Type of Assessment					
Project Title	**CEARIS [1] Number**	**Concurrent Provincial EA?**	**Minister's Decision**		
			Comp Study (s. 21.1)	**Review Panel (s. 21.1)**	**Review Panel (s. 25)**
Joslyn North Mine Project, Townships 94-96, Ranges 11-13 West of 4th Meridian [2]	08-05-37519	*Yes*			X
Saskatchewan					
All Season Road to Wollaston Lake	05-03-8729	*Yes*	X		
Mining and Milling the Midwest Project	06-03-17519	*Yes*	X		
Former Gunnar Mine Site Rehabilitation Project	07-03-30100	*Yes*	X		
Saskatchewan Landing Regional Water Supply Project	08-03-38508		X		
Water West Regional Water Supply Project	08-03-38510		X		
Ontario					
Upgrading of the Clifford Water System [3]	04-03-950		X		
Upgrading of the Mitchell Well Supply [3]	04-03-8000		X		
Upgrade and combine seven water systems in Sauble Beach into the newly named Amabel-Sauble Water System [3]	04-03-8130		X		
Upgrading of the Elora Well System [3]	04-03-10258		X		
Deep Geological Repository for Low and Intermediate Level Radioactive Waste	06-05-17520			X	
The Proposal By Cameco Corporation for the Redevelopment of its Port Hope Conversion Facility (Vision 2010)	06-03-22672		X		
Bruce Power New Nuclear Power Plant Project	07-05-25738				X
Lower Mattagami Hydroelectric Complex Redevelopment [3]	07-03-26302		X		
Darlington New Nuclear Power Plant Project	07-05-29525				X
Nanticoke New Nuclear Power Plant Project	08-05-43757				X
Quebec					
Romaine Hydroelectric Complex Project	04-05-2613	*Yes*			X
Project Rabaska - Implementation of an LNG Terminal [2]	04-05-3971	*Yes*		X	
Cacouna Energy Project [2]	04-03-7440	*Yes*		X	
Project to implement a processing plant for spent potlining [3]	05-03-9911		X		
Construction of the Highway 35 between St-Jean-sur-Richelieu and the American border [3]	05-03-12245		X		
Upgrading to standards the drinking water installations in the municipality of Rimouski	06-03-22292		X		

Table 1. Assessments commenced as Comprehensive Studies in 2004 to 2009 that by December 31, 2009 had a Final Decision on the Type of Assessment					
Project Title	**CEARIS [1] Number**	**Concurrent Provincial EA?**	**Minister's Decision**		
			Comp Study (s. 21.1)	**Review Panel (s. 21.1)**	**Review Panel (s. 25)**
Upgrading to standards the drinking water installations in the municipality of Weedon	07-03-24704		X		
New Brunswick					
Emera Brunswick Pipeline Company Ltd. Brunswick Pipeline Project	06-08-17667	*Yes*			X
Eider Rock Project, Marine Terminal, Saint John Harbour	07-03-28779	*Yes*	X		
Prince Edward Island					
Lennox Island Water Supply Upgrade, Lennox Island, Prince County, Prince Edward Island	06-03-17002		X		
Nova Scotia					
BEPCo. Canada Company - EL 2407 Exploration Drilling Program	04-03-2712		X		
Sydney Tar Ponds and Coke Ovens Sites Remediation Project [2]	05-05-8989	*Yes*		X	
Keltic Petrochemical and Liquefied Natural Gas Facilities	05-03-10471	*Yes*	X		
Deep Panuke Offshore Gas Development Project	06-03-21748		X		
Newfoundland and Labrador					
Crushed Granite Rock Quarry	06-03-19881	*Yes*	X		
Southern Head Marine Terminal and Associated Works related to Crude Oil Refinery Development Proposal	07-03-24726	*Yes*	X		
Lower Churchill Hydroelectric Generation Project	07-05-26178	*Yes*			X
(Grassy Point) Liquefied Natural Gas (LNG) Transshipment and Storage Terminal	07-03-26546		X		
Hebron Development Project	09-03-46144		X		
	TOTAL	*21*	**30**	**5**	**7**

Note 1: CEARIS is the acronym for the Canadian Environmental Assessment Registry Internet Site.

Note 2: Project was referred to federal-provincial review panel.

Note 3: An environmental assessment process under provincial legislation had been completed (or substantively completed) before the CEA Act was triggered.

3.1 Influence on Final Decision on Type of Assessment

Table 2 summarizes the nature and extent of public consultation activity associated with the 35 assessments of projects that underwent the environmental assessment track

process. It was assumed that the nature and extent of public interest in the project and possible controversy were reflected in the number of submissions received and number of those submissions requesting referral of the project to a review panel. On that basis a *Panel Referral Index* (number of submissions x number of panel referral requests) was devised as a rough indicator of the relative strength of the case made by members of the public for a panel referral. There were some gaps in the information, however, as a result of inconsistent reporting formats.

Table 2. Summary of Public Consultation Activity related to the Environmental Assessment Track Process

Project Title	CEARIS Number [1]	# of Submissions		*Panel Referral Index* [2]
		Total	Favouring Panel	
British Columbia				
Deltaport Third Berth Project	04-03-3734	20	7	140
Orca Sand and Gravel Project	04-03-5332	3	0	0
Galore Creek Gold-Silver-Copper Mine	05-03-8858	2	0	0
Kitimat LNG Inc .- Liquefied Natural Gas Terminal	05-03-10430	6	0	0
Fairview Terminal Phase II Expansion Project	08-03-37956	64	No data	?
Mount Milligan, Gold Copper Mine	08-03-39778	27	No data	?
Alberta				
EnCana Corporation-Canadian Forces Base (CFB) Suffield National Wildlife Area Natural Gas Infill Development Project [3]	**05-05-15620**	**103**	**63**	**6 489**
Saskatchewan				
All Season Road to Wollaston Lake	05-03-8729	2	0	0
Mining and Milling the Midwest Project	06-03-17519	4	0	0
Former Gunnar Mine Site Rehabilitation Project	07-03-30100	6	0	0
Saskatchewan Landing Regional Water Supply Project	08-03-38508	0	0	0
Water West Regional Water Supply Project	08-03-38510	0	0	0
Ontario				
Upgrading of the Clifford Water System	04-03-950	0	0	0
Upgrading of the Mitchell Well Supply	04-03-8000	0	0	0
Upgrade and combine seven water systems in Sauble Beach into the newly named Amabel-Sauble Water System	04-03-8130	3	1	3
Upgrading of the Elora Well System	04-03-10258	0	0	0
Deep Geological Repository for Low and Intermediate Level Radioactive Waste [3]	**06-05-17520**	**44**	**22**	**968**
The Proposal By Cameco Corporation for the Redevelopment of its Port Hope Conversion Facility (Vision 2010)	06-03-22672	7	4	28
Lower Mattagami Hydroelectric Complex Redevelopment	07-03-26302	0	0	0
Quebec				
Project Rabaska - Implementation of an LNG Terminal [3]	**04-05-3971**	**7**	**2**	**14**

Table 2. Summary of Public Consultation Activity related to the Environmental Assessment Track Process				
Project Title	**CEARIS Number [1]**	**# of Submissions**		***Panel Referral Index*** [2]
		Total	Favouring Panel	
Cacouna Energy Project [3]	**04-05-7440**	**38**	**12**	**456**
Project to implement a processing plant for spent potlining	05-03-9911	No data	No data	?
Construction of the Highway 35 between St-Jean-sur-Richelieu and the American border	05-03-12245	1	0	0
Upgrading to standards the drinking water installations in the municipality of Rimouski	06-03-22292	0	0	0
Upgrading to standards the drinking water installations in the municipality of Weedon	07-03-24704	0	0	0
New Brunswick				
Eider Rock Project, Marine Terminal, Saint John Harbour	07-03-28779	~60	~20	~1200
Prince Edward Island				
Lennox Island Water Supply Upgrade, Lennox Island, Prince County, Prince Edward Island	06-03-17002	0	0	0
Nova Scotia				
BEPCo. Canada Company – EL 2407 Exploration Drilling Program	04-03-2712	3	No data	?
Sydney Tar Ponds and Coke Ovens Sites Remediation Project [3]	**05-05-8989**	**403**	**156**	**62 868**
Keltic Petrochemical and Liquefied Natural Gas Facilities	05-03-10471	20	7	140
Deep Panuke Offshore Gas Development Project	06-03-21748	7	0	0
Newfoundland and Labrador				
Crushed Granite Rock Quarry	06-03-19881	0	0	0
Southern Head Marine Terminal and Associated Works related to Crude Oil Refinery Development Proposal Crude Oil Refinery	07-03-24726	16	0	0
(Grassy Point) Liquefied Natural Gas (LNG) Transshipment and Storage Terminal	07-03-26546	14	0	0
Hebron Development Project	09-03-46144	0	0	0

Note 1: CEARIS is the acronym for the Canadian Environmental Assessment Registry Internet Site.

Note 2: The Panel Referral Index was devised as a rough indicator of the relative strength of the case for a panel review. Index = No. of submissions received from the public x No. of submissions requesting a panel review.

Note 3: Highlighted projects were referred by the Minister to a review panel.

The following projects were referred to review panels at the conclusion of the environmental assessment track process:

- EnCana Corporation-Canadian Forces Base (CFB) Suffield National Wildlife Area Natural Gas Infill Development Project (Alberta)
- Deep Geological Repository for Low and Intermediate Level Radioactive Waste (Ontario)
- Project Rabaska - Implementation of an LNG Terminal (Quebec)
- Cacouna Energy Project (Quebec)
- Sydney Tar Ponds and Coke Ovens Sites Remediation Project (Nova Scotia)

The EnCana project was on federal land and the Deep Geological Repository was regulated by Canadian Nuclear Safety Commission. Consequently both of those projects required only a federal environmental assessment. The Rabaska, Cacouna and the Sydney Tar Ponds projects required assessment under both federal and provincial legislation.

Four of the five projects referred to a review panel were among the six projects with the highest calculated *Panel Referral Indices*. Their indices ranged from 465 to 62 868.

Although Project Rabaska did not appear to elicit as much public concern (*Panel Referral Index* = 14) as the subsequent Cacouna Energy Project (*Panel Referral Index* = 456), the *Environmental Assessment Track Report* for the former project clearly indicated that one responsible authority favoured comparable, panel-type assessment processes for both projects. Consequently, it is reasonable to conclude that a recommendation for referral of both projects to review panels might have been made regardless of the specific public inputs received through their respective environmental assessment track processes.

All five of the projects that were recommended for referral to review panels possessed certain inherently controversial characteristics. Therefore, the actual influence of the formal public consultations associated with the environmental assessment track processes was difficult to gauge with any degree of certainty. It is quite possible that, in all five cases, recommendations to refer the projects to review panels might have otherwise been made under section 25 of the Act.

In all but one of the 30 cases where a decision was made to continue the environmental assessment by comprehensive study, the *Panel Referral Indices* were substantially lower than projects ultimately referred to a review panel, i.e. from 0 -140. One notable anomaly was *Eider Rock Project, Marine Terminal, Saint John Harbour*, where a substantial proportion of the submissions received from the public, either directly or indirectly, requested a panel review. Although the numbers lack precision, they suggest a *Panel Referral Index* in the range of 1200.

3.2 *Influence on Scope*

The influence of the environmental assessment track process on scope (scope of the project for the purposes of the environmental assessment, the factors to be considered in the assessment, and the scope of those factors) are summarized in Table 3.

In 18 of the 30 cases where the Minister's track decision was to continue with the comprehensive study, the associated public consultation and reporting process had no effect on scope. In one other case it resulted in only minor clarifications of the wording of the *Final Scoping Document*.

In the remaining 11 cases, the *Environmental Assessment Track Reports* indicated that public comments received at the scoping stage resulted in a total of 27 adjustments to the comprehensive studies in question. Three of those involved expanding the scope of the project or expanding the study area, and most of the remainder pertained to factors to be considered in the assessment, or their scope. Responsible authorities also committed to several adjustments to the process, although those adjustments did not, strictly speaking, relate to scoping considerations.

No attempt was made to assess the importance of the changes committed to in the *Environmental Assessment Track Reports*.

Table 3. Influence of the Environmental Assessment Track Process on Scope and on the Environmental Assessment Process

Project Title	CEARIS Number [1]	Number of Submissions	Nature of Adjustments Made
British Columbia			
Deltaport Third Berth Project	04-03-3734	20	• Terminal 2 project (still in a planning stage) to be considered in the cumulative effects assessment • Aboriginal traditional use and knowledge to be considered • Indirect effects on several biophysical, resource use and socio-economic components to be considered.
Orca Sand and Gravel Project	04-03-5332	3	• Study area to be modified to include Mills (Bear) Creek
Galore Creek Gold-Silver-Copper Mine	05-03-8858	2	*None*
Kitimat LNG Inc.-Liquefied Natural Gas Terminal	05-03-10430	6	*None*
Mount Milligan, Gold Copper Mine	08-03-39778	27	*None*
Fairview Terminal Phase II Expansion Project	08-03-37956	6	• Changes to the following Valued Ecosystem Components: air quality; noise and vibration; light; marine environment; archaeology and heritage resources; First Nations current traditional use; wildlife and wildlife habitat; avifauna • Minor editorial changes and changes in the methodology

Table 3. Influence of the Environmental Assessment Track Process on Scope and on the Environmental Assessment Process			
Project Title	**CEARIS Number [1]**	**Number of Submissions**	**Nature of Adjustments Made**
Saskatchewan			
All Season Road to Wollaston Lake	05-03-8729	2	• Description of the collection and usage of baseline environmental data to be improved • Role of local First Nations in the review process to be clarified
Mining and Milling the Midwest Project	06-03-17519	4	• Valued Ecosystem Component , Barren Ground Caribou, to be considered • Capacity of the Sink/Vulture Treated Effluent System to manage treated effluents from both McClean Lake and Midwest to be considered • Influence of metals, process chemicals and radiological doses on potentially exposed organisms inhabiting water and sediments environment adjacent and down gradient of Mink Arm and the Sink/Vulture Treated Effluent System to be considered
Former Gunnar Mine Site Rehabilitation Project	07-03-30100	6	*Minor clarifications of wording*
Saskatchewan Landing Regional Water Supply Project	08-03-38508	0	*None*
Water West Regional Water Supply Project	08-03-38510	0	None
Ontario			
Upgrading of the Clifford Water System	04-03-950	0	*None*
Upgrading of the Mitchell Well Supply	04-03-8000	0	*None*
Upgrade and combine seven water systems in Sauble Beach into the newly named Amabel-Sauble Water System	04-03-8130	3	• Effects on water quality, quantity and local water use to be considered • Cumulative effects of existing septic/sewage systems within Sauble Beach to be considered • Health effects of chlorine in water treatment process to be considered
Upgrading of the Elora Well System	04-03-10258	0	*None*
The Proposal By Cameco Corporation for the Redevelopment of its Port Hope Conversion Facility (Vision 2010)	06-03-22672	7	• Assessment of cumulative effects to be expanded • Clean-up criteria to be specified • Additional Valued Ecosystem Components to be considered • Study area to be expanded to include transportation routes for construction and demolition materials
Lower Mattagami Hydroelectric Complex	07-03-26302	0	*None*

Table 3. Influence of the Environmental Assessment Track Process on Scope and on the Environmental Assessment Process			
Project Title	**CEARIS Number [1]**	**Number of Submissions**	**Nature of Adjustments Made**
Redevelopment			
Quebec			
Project to implement a processing plant for spent potlining	05-03-9911	No data	• Management of by-products to be considered • By-product discharges to be considered • Risk of equipment failure to be considered • Transportation risks to be considered
Construction of the Highway 35 between St-Jean-sur-Richelieu and the American border	05-03-12245	1	*None*
Upgrading to standards the drinking water installations in the municipality of Rimouski	06-03-22292	0	*None*
Upgrading to standards the drinking water installations in the municipality of Weedon	07-03-24704	0	*None*
New Brunswick			
Eider Rock Project, Marine Terminal, Saint John Harbour	07-03-28779	~60	• Scope of the project to be modified to include in-water physical structures, constructed in the marine environment either on a temporary or permanent basis, and any required dredging for purposes of navigation
Prince Edward Island			
Lennox Island Water Supply Upgrade, Lennox Island, Prince County, Prince Edward Island	06-03-17002	0	*None*
Nova Scotia			
BEPCo. Canada Company – EL 2407 Exploration Drilling Program	04-03-2712	3	• "Need for" and "alternatives to" the project to be considered • Damaging weather patterns to be considered
Keltic Petrochemical and Liquefied Natural Gas Facilities	05-03-10471	20	• Scope of the project to be expanded to include shipping within 25 km of Country Island. • Two additional "possible environmental components of concern" - aquaculture and tourism - to be considered
Deep Panuke Offshore Gas Development Project	06-03-21748	7	• Project to be examined in the context of the Eastern Scotian Shelf Integrated Ocean Management Plan, which contains management goals and objectives.
Newfoundland and Labrador			
Crushed Granite Rock Quarry	06-03-19881	0	*None*
Southern Head Marine	07-03-24726	16	*None*

Table 3. Influence of the Environmental Assessment Track Process on Scope and on the Environmental Assessment Process			
Project Title	**CEARIS Number [1]**	**Number of Submissions**	**Nature of Adjustments Made**
Terminal and Associated Works related to Crude Oil Refinery Development Proposal			
(Grassy Point) Liquefied Natural Gas (LNG) Transshipment and Storage Terminal	07-03-26546	14	*None*
Hebron Development Project	09-03-46144	0	*None*

Note 1: CEARIS is the acronym for the Canadian Environmental Assessment Registry Internet Site.

3.3 Influence on Time to undertake the Environmental Assessment

The Act previously required that all projects subject to assessment by comprehensive study, except those that are referred to a review panel via a direct recommendation in accordance with section 25, undergo the environmental assessment track process. That process typically comprised the following steps. The time intervals used for the purposes of this study are shown in brackets:

- **Step 1 – Developing the *Draft Scoping Document*** (from the date of the start of the comprehensive study until the date of the *Public Participation Notice* concerning the *Draft Scoping Document*)
- **Step 2 – Developing the *Environmental Assessment Track Report*** (from the posting date of the *Public Participation Notice* concerning the *Draft Scoping Document* until the date of submission of the *Environmental Assessment Track Report*)
- **Step 3 – The Minister's Environmental Assessment Track Decision** (from the date of submission of the *Environmental Assessment Track Report* until the date of the Minister's environmental assessment track decision)

If a responsible authority was of the opinion that a project should be referred to a review panel, it was not obliged to follow the environmental assessment track process under section 21 and 21.1 of the Act, but could instead make a direct request to the Minister, under section 25 of the Act, for a referral of the project to a review panel.

Figure 1 illustrates, for the 35 projects that had undergone the environmental assessment track process, the amount of time taken to complete the individual steps in the process, as well as the total time to complete the entire process. It also shows, by way of comparison, the total time taken (from the start of the assessment to the Minister's decision to refer the project to a review panel) for the nine panel referral

decisions that had been initiated by responsible authorities' recommendations under section 25 of the Act. Related statistics are presented in Table 4.

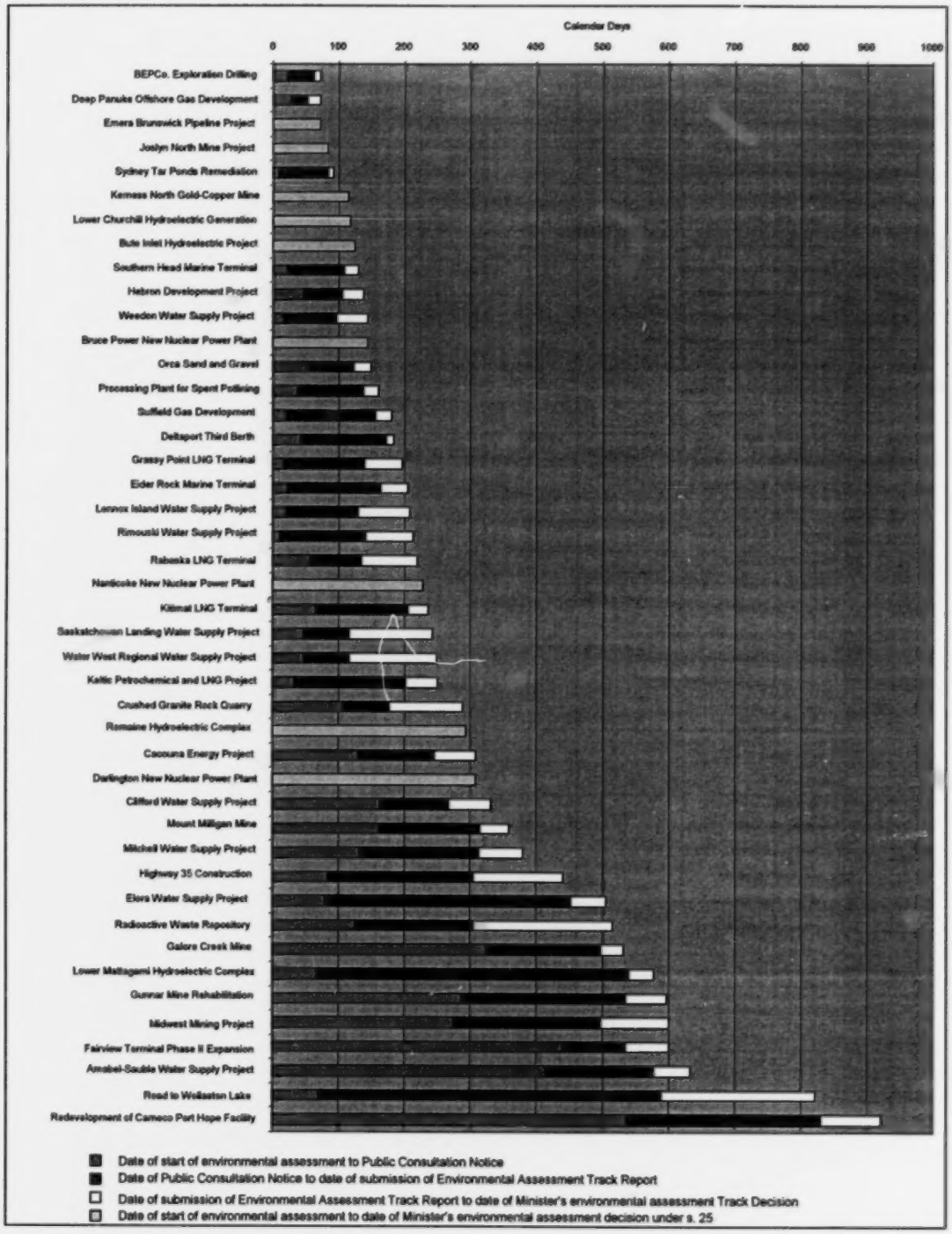
For the 30 cases where the decision was made to continue the assessment of the project by comprehensive study, the time to complete the environmental assessment track process ranged from 72 to 921 days, with a median of 250 days. The extreme situations involved responsible authorities that were specialized regulatory agencies. The 72-day minimum time for completing the process applied to two different projects regulated by the Canada-Nova Scotia Offshore Petroleum Board; that appears to have been close to the absolute minimum time achievable, given the nature of the steps in the process. The maximum 921-day time for completing the process applied to a project regulated by the Canadian Nuclear Safety Commission. That project also appeared to have been a somewhat anomalous situation; environmental assessment of the project could not proceed because the feasibility of the proposal was dependent on the existence of another project that was still in the licensing phase.

For the five cases where a decision was made to refer the project to a review panel after completing the environmental assessment track process, the time to complete the process ranged from 91 to 515 days, with a median of 219 days.

For the nine cases where a decision was made to refer a project to a review panel as a result of responsible authorities' requests under section 25 of the Act, the time to arrive at the decision ranged from 72 to 308 days, with a median of 125 days.

It is important to note that the time periods indicated in Figure 1 and Table 4 do not necessarily equate to "federal process time". Delays attributable to proponents were also included in those time periods. Nevertheless, it is clear that in many cases completing the environmental assessment track process took a very long time. Moreover, the phase (or phases) of the process accounting the most significant portion the time involved varied quite considerably from one project to another.

It is also worth noting that all five panel referral decisions made since mid-2007 had been initiated through requests made under section 25 of the Act. However, because of the small number of projects involved, the significance of that observation remains somewhat unclear.


Calendar Days
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BEPCo. Exploration Drilling
Deep Panuke Offshore Gas Development
Emera Brunswick Pipeline Project
Joslyn North Mine Project
Sydney Tar Ponds Remediation
Kemess North Gold-Copper Mine
Lower Churchill Hydroelectric Generation
Bute Inlet Hydroelectric Project
Southern Head Marine Terminal
Hebron Development Project
Weedon Water Supply Project
Bruce Power New Nuclear Power Plant
Orca Sand and Gravel
Processing Plant for Spent Potlining
Suffield Gas Development
Deltaport Third Berth
Grassy Point LNG Terminal
Elder Rock Marine Terminal
Lennox Island Water Supply Project
Rimouski Water Supply Project
Rabaska LNG Terminal
Nanticoke New Nuclear Power Plant
Kitimat LNG Terminal
Saskatchewan Landing Water Supply Project
Water West Regional Water Supply Project
Kelfic Petrochemical and LNG Project
Crushed Granite Rock Quarry
Romaine Hydroelectric Complex
Cacouna Energy Project
Darlington New Nuclear Power Plant
Clifford Water Supply Project
Mount Milligan Mine
Mitchell Water Supply Project
Highway 35 Construction
Elora Water Supply Project
Radioactive Waste Repository
Galore Creek Mine
Lower Mattagami Hydroelectric Complex
Gunnar Mine Rehabilitation
Midwest Mining Project
Fairview Terminal Phase II Expansion
Amabel-Sauble Water Supply Project
Road to Wollaston Lake
Redevelopment of Cameco Port Hope Facility
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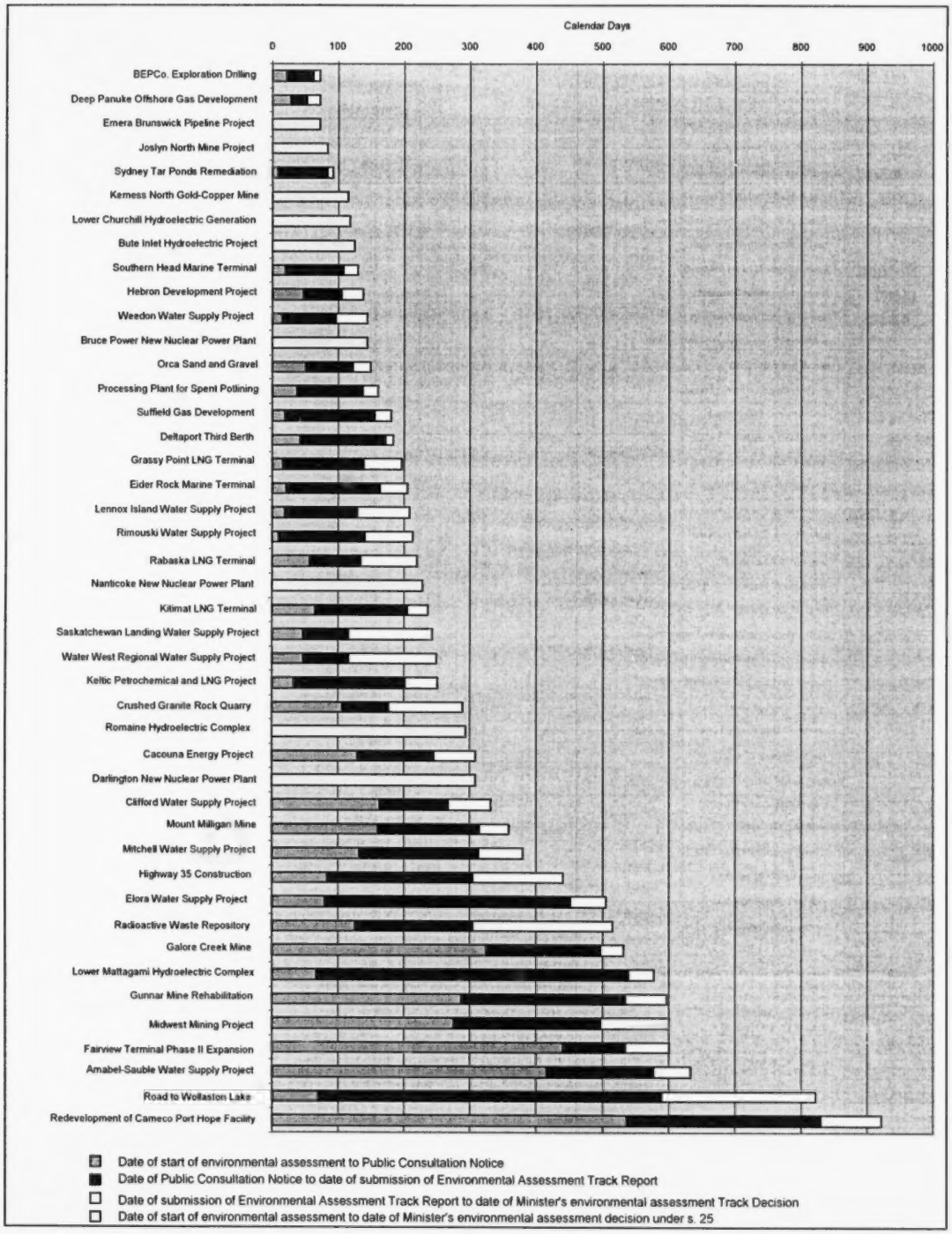
Date of Public Consultation Notice to date of submission of Environmental Assessment Track Report
Date of submission of Environmental Assessment Track Report to date of Minister's environmental assessment Track Decision
Date of start of environmental assessment to date of Minister's environmental assessment decision under s. 25

Figure 1. Time to arrive at a Final Decision on the Type of Assessment

Table 4. Statistics on the Time taken to arrive at a Final Decision on the Type of Assessment				
Statistic	**Time Interval** (days)			
	Step 1 Draft Scoping Document	**Step 2** Environmental Assessment Track Report	**Step 3** Minister's Track Decision	**Entire Process**
Section 21.1 Comprehensive Study (sample of 30)				
Minimum	10	25	9	72
Median	58	130	55	250
Maximum	537	519	232	921
Section 21.1 Panel Referral (sample of 5)				
Minimum	9	74	8	91
Median	57	116	63	219
Maximum	129	179	210	515
Section 25 Panel Referral (sample of 9)				
Minimum	-	-	-	72
Median	-	-	-	125
Maximum	-	-	-	308

Figure 2 shows the time taken to arrive at a decision on the type of assessment for each assessment and each decision pathway (section 21.1 comprehensive study; section 21.1 panel referral; section 25 panel referral). The vertical axis of the diagram shows the cumulative percentage of projects following each decision pathway where the amount of time taken to reach a decision was equal or less than the indicated amount of time. Although the sample size for the latter two situations is small relative to that for the first, the data suggest a tendency for the decision to continue assessing a project by comprehensive study to have taken longer than the decision to refer a project to a review panel, and a tendency that a decision on a direct referral to panel under section 25 was shorter than a referral to panel via the track process.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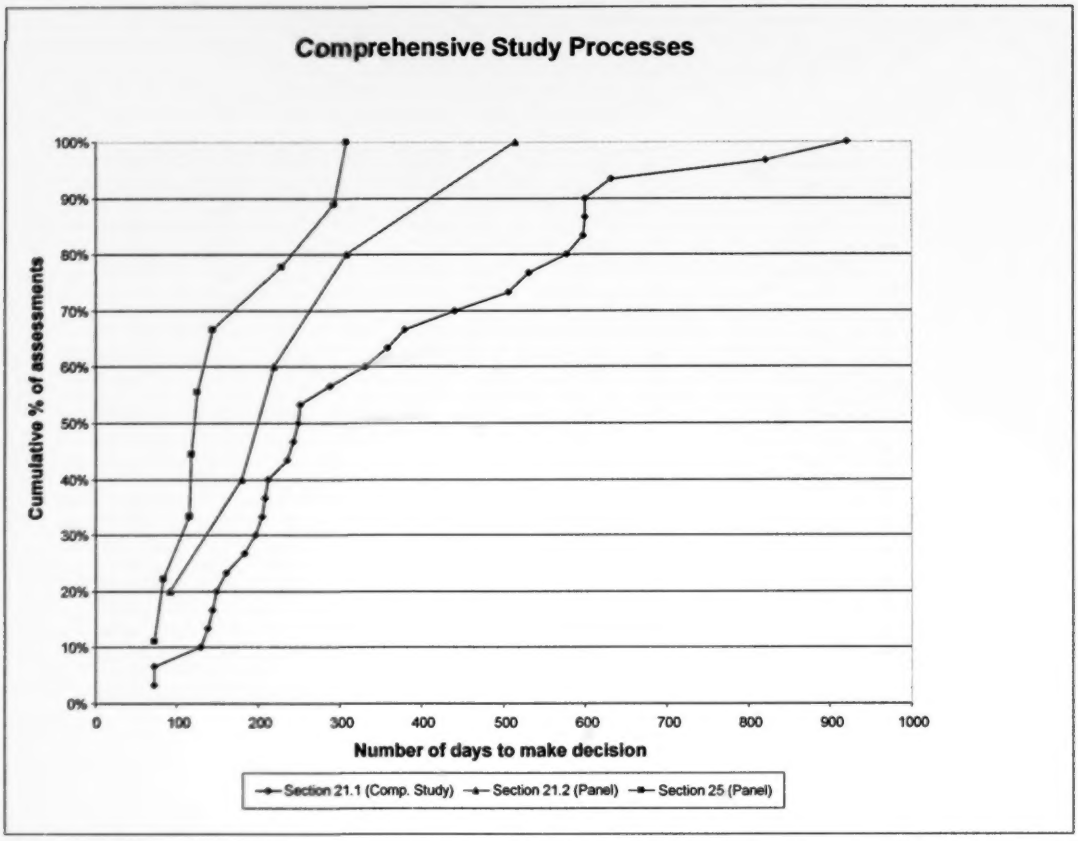

Figure 2. Differences, by Type of Assessment and Decision Path, in the Time to arrive at a Final Decision on the Type of Assessment

3.4 Influence on Coordination of Federal and Provincial Environmental Assessment Activity

The 13 projects listed in Table 5 continued to be assessed by comprehensive study and were concurrently the subject of a provincial environmental assessment, thus potentially giving rise to issues associated with interjurisdictional coordination. In one case (Fairview Terminal Phase II Expansion Project), a formal agreement was signed to establish a single environmental assessment process that would meet the requirements of both federal and provincial jurisdictions. In the remaining cases varying degrees of success were achieved in efficiently harmonizing the processes of federal and provincial jurisdictions.

Table 5. Projects that were concurrently assessed by Comprehensive Study under the *Canadian Environmental Assessment Act* and by an Environmental Assessment under Provincial Legislation		
Project Title	**CEARIS Number[1]**	**Province**
Deltaport Third Berth Project	04-03-3734	BC
Orca Sand and Gravel Project	04-03-5332	BC
Galore Creek Gold-Silver-Copper Mine	05-03-8858	BC
Kitimat LNG Inc.-Liquefied Natural Gas Terminal	05-03-10430	BC
Fairview Terminal Phase II Expansion Project	08-03-37956	BC
Mount Milligan, Gold Copper Mine	08-03-39778	BC
All Season Road to Wollaston Lake	05-03-8729	SK
Mining and Milling the Midwest Project	06-03-17519	SK
Former Gunnar Mine Site Rehabilitation Project	07-03-30100	SK
Eider Rock Project, Marine Terminal, Saint John Harbour	07-03-28779	NB
Keltic Petrochemical and Liquefied Natural Gas Facilities	05-03-10471	NS
Crushed Granite Rock Quarry	06-03-19881	NL
Southern Head Marine Terminal and Associated Works related to Crude Oil Refinery Development Proposal Crude Oil Refinery	07-03-24726	NL

Environmental assessment processes vary considerably from province to province, and it is not always a straightforward task to identify the milestones in those processes that correspond precisely with the key milestones in the federal comprehensive study process. For purposes of comparing timelines in this study, the provincial process milestones that most closely correspond to the federal environmental assessment start date and date of the *Notice of Decision to continue as a Comprehensive Study* are listed in Table 6.

Table 6. Provincial Environmental Assessment Milestones corresponding to Key Federal Comprehensive Study Milestones		
Province	**Provincial Milestone corresponding to the Federal**	
	Date of the Start of the Environmental Assessment	**Date of *Notice of Decision to continue as a Comprehensive Study***
British Columbia	BC Environmental Assessment Office issues order under section 10 of the *Environmental Assessment Act*	Date of issuance of approved *Application Terms of Reference/Information Requirements*
Saskatchewan	No analogous milestone	No analogous milestone
New Brunswick	Date the project was registered	Date of issuance of final *Terms of Reference* for the Environmental Impact Assessment
Nova Scotia	Date the project was registered	Date of issuance of final *Terms of Reference* for the Environmental Assessment Report
Newfoundland and Labrador	Date the project was registered	Date of issuance of final *Guidelines* for the Environmental Impact Statement

In the case of assessments conducted under the *Environmental Assessment Act* of Saskatchewan, the provincial Minister issues a notice that an assessment is about to be conducted, and at the same time releases proposed terms of reference for that assessment. Consequently there is no clear correspondence between Saskatchewan process milestone dates and the two key federal milestone dates addressed in this study. For that reason it was not feasible to make time-related federal-provincial process comparisons for the assessments of the three projects in Saskatchewan. However, time-related federal-provincial process comparisons for the nine remaining projects are provided in Figure 3.

Because of the small sample size, there are limitations on the conclusions that can be drawn from that experience. Nevertheless, the following general observations can be made:

- The amount of time involved in establishing provincial *Terms of Reference* or *Guidelines* and in undertaking the federal environmental assessment track process has been highly variable.

- In all cases, initiation of the federal environmental assessment track process occurred well after (minimum 63 days; median 176 days; maximum 590 days) the initiation of the process for establishing provincial *Terms of Reference* or *Guidelines*.

- In only two cases was the federal environmental assessment track process completed before the provincial *Terms of Reference* or *Guidelines* were finalized.

- Lack of early synchronization of federal and provincial activities appeared to be a critically important consideration at the front end of environmental assessment processes that involved both jurisdictions.

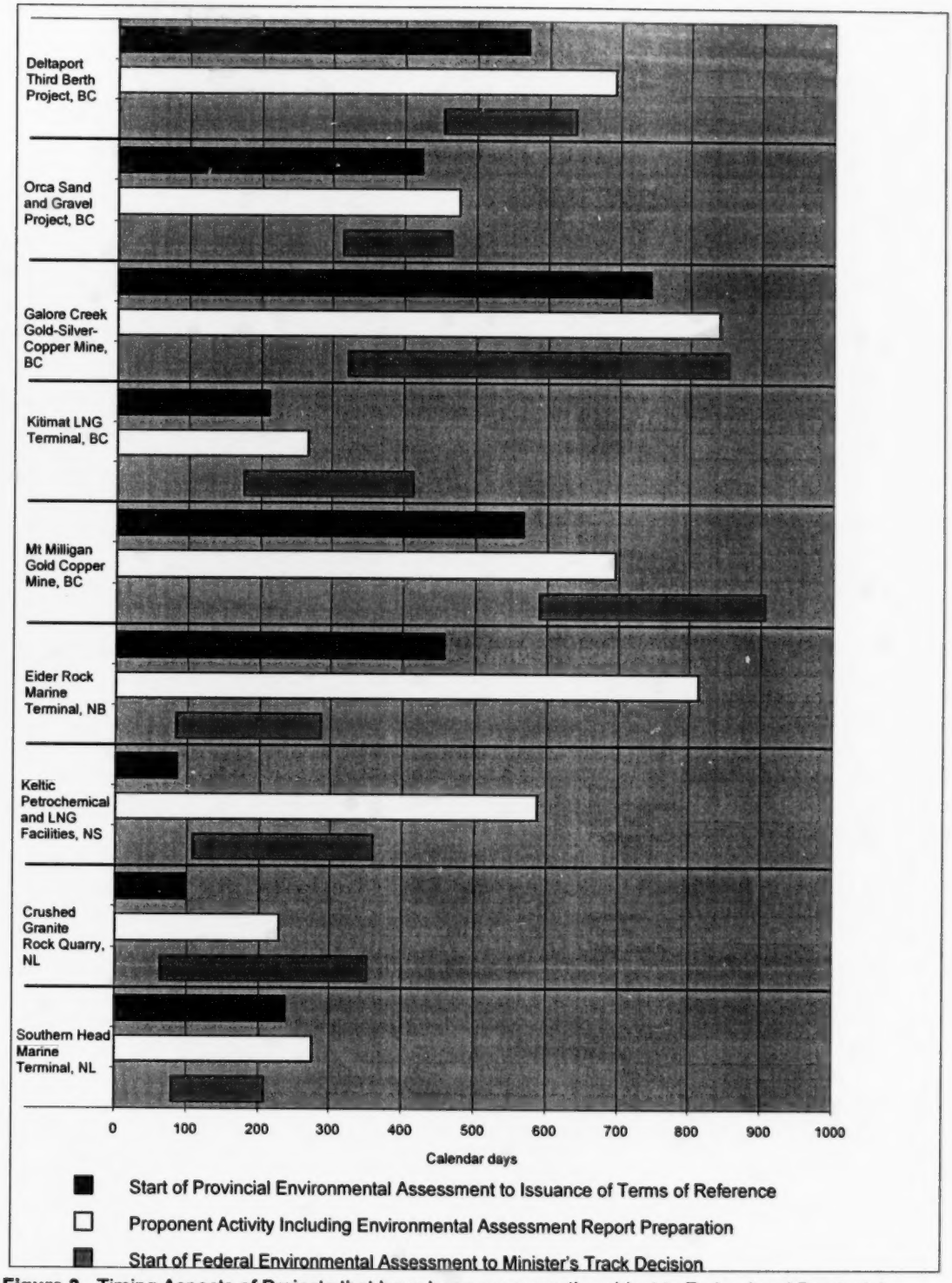

Figure 3. Timing Aspects of Projects that have been concurrently subject to Federal and Provincial Environmental Assessment Legislation

4 DISCUSSION

4.1 Influence on Final Decision on Type of Assessment

There is no clear evidence that the environmental assessment track process under sections 21 and 21.1 of the Act has played a significant role in determining which projects should be referred to review panels. The projects that were referred to review panel as a result of the track process possessed certain inherently controversial characteristics, and may well have been referred for panel review regardless of the process in existence. As well, all panel referrals since mid-2007 have occurred without going through the track process.

Moreover, there is no strong evidence that that projects that continued to be assessed by comprehensive study should have been assessed otherwise. It is noteworthy that a large percentage of written submissions associated with the public consultation phase of the environmental assessment track process have not addressed the question of preferred type of assessment.

4.2 Influence on Scope

Soliciting written comment on scope has resulted in modifications of scope or of the environmental assessment process in about one-third of the assessments that have remained on the comprehensive study track, with an average of less than 3 modifications per assessment. Those low numbers were unexpected.

4.3 Influence on Time to undertake the Environmental Assessment

The study demonstrates that it consistently took longer to make a decision to undertake a comprehensive study than to make a decision to refer a project to a review panel. The small sample size of referrals to panels, via either the environmental assessment track process or responsible authorities' recommendations under section 25 of the Act, precludes reliable comparison of the relative efficiency of the alternative paths to the same decision. However, the data suggest that referrals resulting from section 25 recommendations may have been faster.

The track decision process typically takes a substantial amount of time, and it would be expected that this would be reflected in the overall amount of time required to complete the comprehensive study process. However, other factors, many of which are largely within the control of proponents, also can come into play

Regarding the time required to complete panel reviews, the limited existing data suggests that the environmental assessment track process may not have had a marked effect.

4.4 Influence on Coordination of Federal and Provincial Environmental Assessment Activity

It is clear that the environmental assessment process has taken a long time in a significant proportion of cases. Although this is an important finding in it own right, it has also had a significant effect on the ability of federal and provincial governments to efficiently coordinate their efforts in situations where the environmental assessment is required by both federal and provincial legislation. It should be noted that there has been a considerable gap between the commencement of the process of establishing provincial environmental assessment *Terms of Reference* or *Guidelines* and the commencement of federal environmental assessment activity. That gap has ranged from 63 to 590 days, with a median of 176 days.

The above situation has presumably affected efficient federal-provincial coordination of environmental assessment activity in a number of important ways, such as:

- by making public input to the assessment both confusing, inefficient and ultimately of less potential benefit to the environment;
- by inhibiting the establishment a single terms of reference (scope) that meets the requirements of both jurisdictions, as well as public expectations; and
- by introducing unnecessary time delays.

5 CONCLUSIONS

The analysis upon which this report is based was conducted during the last six months of 2009. It informed development of amendments to the Act which subsequently received Royal Assent on July 12, 2010. Those amendments significantly changed the comprehensive study process by removing the requirement for an environmental assessment track decision. The consultation that was part of the track decision process was replaced by early public consultation on the project and the conduct of the comprehensive study. The Agency has been made responsible for the conduct of most comprehensive studies, with the exception of those involving the National Energy Board or the Canadian Nuclear Safety Commission. Regulations have been proposed to establish timelines for comprehensive studies conducted by the Agency.

The changes are expected to improve timeliness, accountability, and coordination with provincial reviews.